

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF ARTESIAN WATER)	
COMPANY, INC.'S SUBMISSION, PURSUANT)	
TO 26 DEL. C. § 1404, OF A WATER CON-)	
SERVATION PLAN FOR 2006-2009 AND A)	PSC DOCKET NO. 06-221
CERTIFICATION OF ADEQUATE WATER)	
SUPPLY FOR NORTHERN NEW CASTLE COUNTY)	
FOR THE PROJECTED YEAR 2009)	
(FILED JUNE 30, 2006))	

ORDER NO. 7233

This 24th day of July, 2007, the Commission finds, determines, and Orders the following:

1. In the "Water Supply Self-Sufficiency Act of 2003,"¹ the General Assembly and Governor announced the overarching command: that by the year 2010, each water utility serving northern New Castle County must have sufficient sources of supply and interconnection commitments within this State to meet the water demands of its customers in that area, even during drought of record conditions.² In order to achieve that goal, the Self Sufficiency Act installs a regime of public certification by each water utility: every three years, beginning in 2006, an officer of the water utility must publicly certify that the utility has an adequate supply of water to meet the "projected demand" of its customers in the relevant "projected year" three years hence.³

¹See 26 Del. C. §§ 1401-1408 (2006 Supp.) ("the Self-Sufficiency Act").

²See 26 Del. C. §§ 1401(1)-(2); 1402(1), (3), (4), (7) (2006 Supp.).

³See 26 Del. C. §§ 1401(4); 1404(a)(1), (d)-(i) (2006 Supp.). The "projected demand" for the utility in such future "projected year" is

A. Artesian Water Company's Adequate Supply Certification

2. On June 30, 2006, Artesian Water Company Inc. ("Artesian") filed its initial certification related to the adequacy of its water supply for the regime's first projected year, 2009.⁴ With such certification, Artesian also supplied supporting materials to demonstrate that it will have adequate sources of supply to fully meet its "projected demand" for that year.⁵

3. Staff utilized a Commission-retained consulting firm to review the supporting materials submitted by Artesian.⁶ The consulting firm also reviewed other relevant materials and conducted its own analysis of the supply amounts that might be available to Artesian in 2009 in a time of a drought of record.⁷ Based largely on the

determined by the Water Supply Coordinating Council ("WSCC"). See 26 Del. C. §§ 1402(7), 1403 (2006 Supp.). The WSCC, in setting this future customer demand, must assume that in the projected year the area will suffer 75 days of drought with conditions similar to those that occurred during the drought of 2002. See 26 Del. C. § 1402(3), (7) (2006 Supp.). Similarly, the utility in making its certification, and the Commission in reviewing the availability of adequate supply, must also assume the existence of such drought of record conditions in the projected year. See 26 Del. C. § 1402(1) (2006 Supp.).

⁴The Commission has already, in an earlier docket (PSC Dckt. No. 05-82), reviewed the adequacy of Artesian's supply sources to meet its demand in northern New Castle County for the period through 2006. See PSC Order No. 6954 (June 21, 2006). The Commission considers this matter as Artesian's first filing under the particular parameters of the Self-Sufficiency Act.

⁵The WSCC set the "projected demand" for Artesian's system for 2009 as 23.3 million gallons per day ("23.3 MGD"). See 26 Del. C. §§ 1402(7) (2006 Supp.). The consulting firm retained by the Commission interprets this demand target of 23.3 MGD to represent the average daily demand for the maximum month projected for the 2009 demand year. See n. 8 below. In its memorandum, Staff shares this interpretation.

⁶The Commission published notice of Artesian's submission of its certification and its accompanying consumer education plan. See PSC Order No. 6986 (Aug. 8, 2006). No person or entity submitted any comments about the certification or conservation plan in response to such notice.

⁷The consulting firm, Leggette, Brashears & Graham, Inc. ("LBG"), had also assisted Staff, and the Commission, during the earlier proceedings in

consultant's investigation and analysis, Staff reports (in its memorandum of July 2, 2007) that it appears that Artesian will have sufficient sources and levels of supply (from its own sources and pursuant to supply agreements with other purveyors) to meet its "projected demand" in the drought sensitive northern New Castle County area for 2009. According to Staff, the consultant firm's independent analysis concludes that the amount of reliable water supply that would be available to Artesian throughout a recurrence of drought of record conditions totals a minimum of 28.53 MGD on an average daily basis.⁸ This level of supply exceeds the projected demand figure of 23.3 MGD set by the WSCC. Therefore, Staff recommends that Artesian's certification of adequate supply for the 2009 "projected year" be accepted.⁹

Docket 05-82. See n. 4 above. In conducting its review and analysis in this matter, LBG looked to some of the materials, and conclusions it had reached in that prior proceeding. At the end of its investigation and analysis, LBG provided Staff with its May 1, 2007 final report. ("LBG Rpt."). As indicated below, Artesian still questions some of the contents of that final report.

⁸See Staff Mem. at pg. 4; LBG Rpt. at pgs. 3-1 through 3-3 & 4-1. In its supporting materials, Artesian claimed that it had a total of 26.46 MGD of peak demand capacities from its own well-fields. It also posited that it could draw on, at a minimum, another 3.7 MGD of supply under supply agreements with other water entities. LBG did its own analysis of the capacities available from the well fields. It saw the total peak demand capabilities from the well fields as 24.53 MGD. See LBG Rpt. at pg. 2-17. That figure, reflecting supply solely from Artesian's own well field capacities, is in itself greater than the projected demand benchmark. The consultant also saw 3.7 MGD as reasonably being available from interconnections sources. The consulting firm thus concluded that the total water availability to Artesian's water system from all sources could be reasonably estimated to be 28.53 MGD. Again, that supply number exceeds the projected demand figure determined by the WSCC. The consultant also noted that even if its own (reworked) projected supply amounts were reduced by a "standard" safety factor of ten percent, the resulting total supply figure would continue to exceed the projected demand target. See LBG Rpt. at pg. 3-3.

⁹Staff, echoing the consulting firm, suggests a caveat to such acceptance. The consulting firm points out that its supply versus demand

4. At its meeting on July 24, 2007, the Commission considered Staff's memorandum and heard from the retained consulting firm and Artesian. From the consulting firm's and Staff's submissions, the Commission cannot find any basis to reject Artesian's certification of adequate supply for the 2009 projected year. Such certification is therefore accepted. In doing so, the Commission acknowledges the caution expressed by the consultant and Staff related to an actual daily demand possibly exceeding the mean daily demand target used for the "projected demand." See n. 9 above. However, the Commission does not believe that such "limitation" raises an issue that would require rejecting Artesian's adequate supply certification for 2009.¹⁰

5. In a reply to Staff's memorandum, Artesian endorses Staff's final recommendation that Artesian's supply certification should be accepted. And it concurs with the LBG final report's bottom line: that Artesian's existing sources can meet all projected demands

comparisons in this proceeding were based on the need to achieve a static 23.3 MGD mean daily demand target. WSCC used such a figure as its projected demand benchmark. The consulting firm emphasizes that given that actual demands fluctuate on a daily basis, the actual demand on a particular day could possibly exceed the static 23.3 MGD average target level. Moreover, the consulting firm further cautioned that depending on the patterns of demand if a drought of record recurred, there could exist the possibility that actual daily demand on a given day could exceed the production capacity of Artesian's supply system for that same day. On such occasions, Artesian would then have to rely on system storage or increased interconnection amounts to close the gap. The consulting firm reports that it had no information that Artesian would not be able to do so to meet likely daily demand departures under those conditions.

¹⁰At the same time, the Commission will send a copy of the LBG report to the WSCC so that the Council can review the comments made by the consultant relative to the possibility that actual daily demands may exceed a demand level expressed in terms of a static mean daily amount. The Council can then consider whether to continue to use such type of figure as the "projected demand" benchmark. The Commission takes the same course in light of a similar limitation expressed by the consulting firm in the docket surrounding the supply certification filed by United Water Delaware, Inc. See PSC Order No. 7234 (July 24, 2007).

through 2009. However, Artesian challenges the consulting firm's references in its final report to a draft Groundwater Model Production Run Report for Upper New Castle County, released by the United States Army Corps of Engineers in February, 2007. See LBG Rpt. at pgs. 2-8, 2-18, 3-4, 4-1. Artesian argues that such draft report was later superseded by a final report by the Corps of Engineers (approved by the WSCC) that revised the earlier draft. Artesian asserts that if LBG wished to look to the Corps' report, the final version would be the more appropriate document. In particular, Artesian objects to references in LBG's final report which cite to the February draft report as raising questions about the long-term sustainability of ground supplies in northern New Castle County, including those now utilized by Artesian. The Commission reads LBG's final report to have utilized the Corps' draft report: (a) to suggest an additional reason to accept LBG's analysis (also made in Docket No. 05-82) to assign a slightly lower capacity amount to the Chesapeake City/Brennan Farm well-field; and (b) to highlight a potential issue about supply availability over the long run. The references to the Corps' draft report had no impact on the consulting firm's ultimate conclusion that Artesian can be expected to have more than adequate supply to meet demand in the relevant short term, the projected year of 2009. See Rpt. at pg. 3-4. In light of that, the Commission sees no reason, at this date - a year after the certification was filed, to require any reworking of the LBG final report. The Commission is not "approving" the LBG report as the Commission's own document; rather, it is utilizing it to see if there are possible reasons to reject Artesian's

offered certification. And, as indicated above, the Commission sees nothing in the LBG report that calls for rejecting the adequate supply certification for the year 2009. In addition, Artesian's responses to both the final report and LBG's earlier drafts are also part of the record in this proceeding. They are available to be read in conjunction with the LBG final report.

B. Artesian's Consumer Water Conservation Plan

6. The Self-Sufficiency Act also requires each Commission-jurisdictional water utility to file, concurrently with its adequate supply certification, its three-year "Consumer Water Conservation Plan." Such a plan must outline the methods the utility will use to educate its customers about the benefits of water conservation, the workings of the utility's water conservation rate structure, the costs resulting from water leaks, and the availability of consumer equipment and devices that will improve efficient use of water supply.¹¹ Artesian filed its consumer conservation plan with its certification in June, 2006. In PSC Order No. 7051 (Oct. 17, 2006) the Commission formally acknowledged the plan.¹² In doing so, the Commission, with Artesian's acquiescence, thought it might be worthwhile to continue to review the submitted plan to allow for possible further suggested modifications.

¹¹See 26 Del. C. § 1404(a)(1), (b) (2006 Supp.).

¹²See 26 Del. C. § 1404(c). Under the Self-Sufficiency Act, the Commission must acknowledge the conservation plan within 120 days of its submission. In doing so, the Commission can offer recommendations for changes, which the submitting utility may then choose to incorporate in a revised plan.

7. Staff retained a consultant to further review the plan. He offered nine further recommendations and Artesian responded to them. In its July 2, 2007 memorandum, Staff sets out its views on the consultant's recommendations and Artesian's responses. The Commission now endorses Staff's views and offers them to Artesian for its consideration in its 2006 plan or future plans. In doing so, the Commission does not now define the exact scope of the conservation plans. Rather, in this initial proceeding under the Self-Sufficiency Act, the Commission believes that Staff's views of how each of the consultant's recommendations might be considered - either in the conservation plan or in the context of some other proceeding - strike the appropriate balance.

8. At the same time, the Commission strongly urges Artesian to consider the recommendations that focus on the utility making efforts to collect and retain data related to its customers' responses to its conservation education initiatives. The Commission recognizes that any system for acquiring and holding onto data comes at some cost. However, the Self-Sufficiency Act requires - beginning in 2009 - that Artesian also evaluate the "effectiveness" of its earlier conservation plan in informing customers of methods for efficient water use.¹³ The Commission expects that when Artesian files its first such "evaluation" in 2009, Artesian will be able to point to both the specific criteria and the supporting data it utilized to reach its conclusion about the "effectiveness" of its 2006 plan. The collection

¹³See 26 Del. C. § 1404(b)(2) (2006 Supp.).

of data now concerning customers' responses to its initiatives can only ease the 2009 evaluation task.

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to 26 Del. C. § 1404(g), the certification of adequate water supply for the projected year 2009 submitted by Artesian Water Company, Inc. on June 30, 2006 is hereby accepted.

2. That the Secretary shall deliver a copy of the "Assessment of June 30, 2006 Filing of Artesian Water Company under the Delaware Water Supply Sufficiency Act" (May 1, 2007) prepared by Leggette, Brashears & Graham, Inc., to the Water Supply Coordinating Council. Such document is offered to the Water Supply Coordinating Council for its consideration of whether it desires, for future reporting years, to modify how it expresses the "projected demands" for a projected year.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Dallas Winslow
Commissioner

Commissioner

PSC Docket No. 06-221, Order No. 7233 Cont'd.

Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary